

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GARY ROEMER,

Plaintiff,

vs.

No. CIV 22-0524 JB/JHR

BOARD OF REGENTS OF NEW MEXICO
STATE UNIVERSITY; DAN ARVIZU;
LAURA CASTILLE; DONALD CONNER;
ANNAMARIE DELOVATO; ROLANDO
FLORES and MATTHEW GOMPPER,
individually and in their official capacities,

Defendants.

ORDER¹

THIS MATTER comes before the Court on: (i) the Plaintiff's Motion to Compel Appearance and Testimony of Jessica Buskirk at Deposition, filed April 21, 2023 (Doc. 52)(“Motion to Compel”); and (ii) the Defendants' Expedited Motion to Stay Proceedings Pending Resolution of Motions for Judgment on the Pleadings/For Summary Judgment Based Upon Qualified Immunity and Memorandum in Support Thereof, filed April 21, 2023 (Doc. 57). The Court held a hearing on June 16, 2023. See Clerk's Minutes at 1, filed June 16, 2023 (Doc. 83). The primary issues are: (i) whether the Court should stay all further proceedings in this matter pending resolution of the Defendants' Motion for Judgment on the Pleadings or For Summary

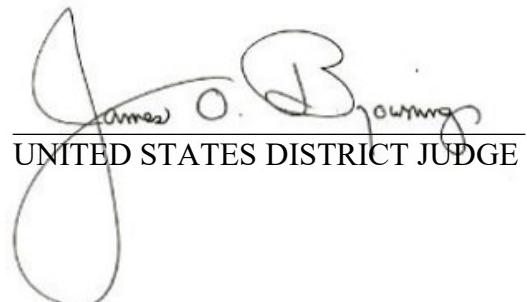
¹This Order disposes of: (i) the Plaintiff's Motion to Compel Appearance and Testimony of Jessica Buskirk at Deposition, filed April 21, 2023 (Doc. 52); and (ii) the Defendants' Expedited Motion to Stay Proceedings Pending Resolution of Motions for Judgment on the Pleadings/For Summary Judgment Based Upon Qualified Immunity and Memorandum in Support Thereof, filed April 21, 2023 (Doc. 57). The Court will issue at a later date, however, a Memorandum Opinion more fully detailing its rationale for this decision.

Judgement Based on Qualified Immunity on Count 1 of Plaintiff's Complaint and Memorandum in Support, filed April 21, 2023 (Doc. 55), and the Defendants' Motion for Summary Judgment Based on Qualified Immunity on Courts II-IV of Plaintiff's Complaint and Memorandum in Support, filed April 21, 2023 (Doc. 56); (ii) whether the Court, pursuant to rule 37 of the Federal Rules of Civil Procedure and D.N.M. LR-Civ 30.2, should compel the Defendants to produce Jessica Bushkirk to give testimony at a noticed deposition; and (iii) whether the Court should impose sanctions for Bushkirk's non-attendance at a noticed deposition. For the reasons stated on the record at the hearing, the Court concludes that: (i) the case shall be stayed pending resolution of Defendants' two qualified immunity motions, see Draft Transcript of June 16, 2023, Hearing at 20:17-22 (taken June 16, 2023)(“Tr.”)(Court);² id. at 27:22-28:17 (Court); (ii) pursuant to the Court’s conclusion regarding the propriety of a stay, and for the reasons stated on the record at the hearing, see Tr. at 28:18-29:3 (Court), the Court will not compel Bushkirk to give testimony at a deposition at the present time; and (iii) the Plaintiff is entitled to recover from Defendants reasonable costs associated with noticing Bushkirk’s March 8, 2023, deposition, see Motion to Compel at 2.

IT IS ORDERED that: (i) the Plaintiff's Motion to Compel Appearance and Testimony of Jessica Buskirk at Deposition, filed April 21, 2023 (Doc. 52), is denied in part and granted in part; (ii) the Court does not compel Bushkirk to give testimony at a noticed deposition; (iii) the Plaintiff may, however, recover from Defendants reasonable costs associated with noticing Bushkirk’s March 8, 2023, deposition; (iv) the Defendants’ Expedited Motion to Stay Proceedings Pending Resolution of Motions for Judgment on the Pleadings/For Summary Judgment Based Upon Qualified Immunity and Memorandum in Support Thereof, filed April 21, 2023 (Doc. 57), is

²The Court’s citations to the transcript of the hearing refer to the court reporter’s original, unedited version. Any final transcript may contain slightly different page and/or line numbers.

granted; and (v) the case is stayed pending resolution of the Defendants' Motion for Judgment on the Pleadings or For Summary Judgement Based on Qualified Immunity on Count 1 of Plaintiff's Complaint and Memorandum in Support, filed April 21, 2023 (Doc. 55), and the Defendants' Motion for Summary Judgment Based on Qualified Immunity on Courts II-IV of Plaintiff's Complaint and Memorandum in Support, filed April 21, 2023 (Doc. 56).



James O. B. Young
UNITED STATES DISTRICT JUDGE

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-- and --

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-- and --

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